

# PATENT COOPERATION TREATY

# PCT

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY (Chapter I of the Patent Cooperation Treaty)

(PCT Rule 44*bis*)

Applicant's or agent's file reference 11396p	<b>FOR FURTHER ACTION</b>	See item 4 below
International application No. PCT/EP2004/011832	International filing date ( <i>day/month/year</i> ) 19 October 2004 (19.10.2004)	Priority date ( <i>day/month/year</i> ) 20 October 2003 (20.10.2003)
International Patent Classification (8th edition unless older edition indicated) See relevant information in Form PCT/ISA/237		
Applicant Ball Packaging Europe GmbH		

1.	This international preliminary report on patentability (Chapter I) is issued by the International Bureau on behalf of the International Searching Authority under Rule 44 <i>bis</i> .1(a).																								
2.	This REPORT consists of a total of 10 sheets, including this cover sheet.  In the attached sheets, any reference to the written opinion of the International Searching Authority should be read as a reference to the international preliminary report on patentability (Chapter I) instead.																								
3.	<p>This report contains indications relating to the following items:</p> <table style="width: 100%;"> <tr> <td style="width: 10%; text-align: center;"><input checked="" type="checkbox"/></td> <td style="width: 30%;">Box No. I</td> <td style="width: 60%;">Basis of the report</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. II</td> <td>Priority</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td>Box No. III</td> <td>Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td>Box No. IV</td> <td>Lack of unity of invention</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td>Box No. V</td> <td>Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. VI</td> <td>Certain documents cited</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. VII</td> <td>Certain defects in the international application</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td>Box No. VIII</td> <td>Certain observations on the international application</td> </tr> </table>	<input checked="" type="checkbox"/>	Box No. I	Basis of the report	<input type="checkbox"/>	Box No. II	Priority	<input checked="" type="checkbox"/>	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability	<input checked="" type="checkbox"/>	Box No. IV	Lack of unity of invention	<input checked="" type="checkbox"/>	Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement	<input type="checkbox"/>	Box No. VI	Certain documents cited	<input type="checkbox"/>	Box No. VII	Certain defects in the international application	<input checked="" type="checkbox"/>	Box No. VIII	Certain observations on the international application
<input checked="" type="checkbox"/>	Box No. I	Basis of the report																							
<input type="checkbox"/>	Box No. II	Priority																							
<input checked="" type="checkbox"/>	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability																							
<input checked="" type="checkbox"/>	Box No. IV	Lack of unity of invention																							
<input checked="" type="checkbox"/>	Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement																							
<input type="checkbox"/>	Box No. VI	Certain documents cited																							
<input type="checkbox"/>	Box No. VII	Certain defects in the international application																							
<input checked="" type="checkbox"/>	Box No. VIII	Certain observations on the international application																							
4.	The International Bureau will communicate this report to designated Offices in accordance with Rules 44 <i>bis</i> .3(c) and 93 <i>bis</i> .1 but not, except where the applicant makes an express request under Article 23(2), before the expiration of 30 months from the priority date (Rule 44 <i>bis</i> .2).																								

The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland	Date of issuance of this report <b>24 April 2006 (24.04.2006)</b>  Authorized officer <div style="text-align: center; font-size: 1.2em;"><b>Ellen Moyse</b></div>
Facsimile No. +41 22 740 14 35	Telephone No. +41 22 338 89 75

# PATENT COOPERATION TREATY

From the  
INTERNATIONAL SEARCHING AUTHORITY

REC'D 23 JUN 2005

PCT WFO

To:

see form PCT/ISA/220

## WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

Date of mailing  
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference  
see form PCT/ISA/220

**FOR FURTHER ACTION**  
See paragraph 2 below

International application No.  
PCT/EP2004/011832

International filing date (day/month/year)  
19.10.2004

Priority date (day/month/year)  
20.10.2003

International Patent Classification (IPC) or both national classification and IPC  
B65D6/40

Applicant  
BALL PACKAGING EUROPE GMBH

### 1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☒ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☒ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☒ Box No. VIII Certain observations on the international application

### 2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

### 3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:



European Patent Office  
D-80298 Munich  
Tel. +49 89 2399 - 0 Tx: 523656 epmu d  
Fax: +49 89 2399 - 4465

Authorized Officer

Fitterer, J

Telephone No. +49 89 2399-7916



**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**

International application No.  
PCT/EP2004/011832

---

**Box No. I Basis of the opinion**

---

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
  - ☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
  - a. type of material:
    - ☐ a sequence listing
    - ☐ table(s) related to the sequence listing
  - b. format of material:
    - ☐ in written format
    - ☐ in computer readable form
  - c. time of filing/furnishing:
    - ☐ contained in the international application as filed.
    - ☐ filed together with the international application in computer readable form.
    - ☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**

International application No.  
PCT/EP2004/011832

---

**Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability**

---

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of:

- ☐ the entire international application,
- ☒ claims Nos. 18,34

because:

- ☐ the said international application, or the said claims Nos.      relate to the following subject matter which does not require an international preliminary examination (*specify*):
- ☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos.      are so unclear that no meaningful opinion could be formed (*specify*):
- ☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.
- ☒ no international search report has been established for the whole application or for said claims Nos. 18,34
- ☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:
  - the written form                      ☐ has not been furnished
  - ☐ does not comply with the standard
  - the computer readable form      ☐ has not been furnished
  - ☐ does not comply with the standard
- ☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-*bis* of the Administrative Instructions.
- ☐ See separate sheet for further details

**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**

International application No.  
PCT/EP2004/011832

---

**Box No. IV Lack of unity of invention**

---

1. ☒ In response to the invitation (Form PCT/ISA/206) to pay additional fees, the applicant has:
- ☐ paid additional fees.
  - ☐ paid additional fees under protest.
  - ☒ not paid additional fees.
2. ☐ This Authority found that the requirement of unity of invention is not complied with and chose not to invite the applicant to pay additional fees.
3. This Authority considers that the requirement of unity of invention in accordance with Rule 13.1, 13.2 and 13.3 is
- ☐ complied with
  - ☒ not complied with for the following reasons:  
**see separate sheet**
4. Consequently, this report has been established in respect of the following parts of the international application:
- ☐ all parts.
  - ☒ the parts relating to claims Nos. 1-12,15-17,19,24,30-33

---

**Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

---

1. Statement

Novelty (N)	Yes: Claims	
	No: Claims	1-12,15-17,19,24,30-33
Inventive step (IS)	Yes: Claims	
	No: Claims	1-12,15-17,19,24,30-33
Industrial applicability (IA)	Yes: Claims	1-12,15-17,19,24,30-33
	No: Claims	

2. Citations and explanations

**see separate sheet**

---

**Box No. VIII Certain observations on the international application**

---

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

**see separate sheet**

**Re Item IV**

1 The separate inventions/groups of inventions are:

- (1) claims: 1-12, 15-17, 19, 24, 30-33  
A beverage can comprising a dome shaped base having a threaded spout which is adapted to receive a threaded reclosing closure.
- (2) claims: 13-14, 14a, 27, 27a  
A beverage can comprising a closure having a peripheral contour for supporting the can for a steady stand.
- (3) claim: 20  
A beverage can comprising a closure carrying a gasket.
- (4) claims: 21, 22  
A beverage can comprising a closure having a vent passage.
- (5) claim: 23  
A beverage can comprising a closure having a tamper evidence device.
- (6) claims: 25, 29  
A beverage can comprising a telescoping spout.
- (7) claims: 26, 28  
A beverage can comprising a vessel being attached to a closure.

2 These inventions are not so linked as to form a single general inventive concept (Rule 13.1 PCT) for the following reasons:

The features of claim 5 (which is related to claims 1 to 4) are common to inventions 1 to 7. These features are well known from the prior art, as disclosed by document DE 198 02 953 A1. Claim 13 (invention 2) depends on claim 12 which depends on claim 5. Furthermore, claims 20, 21, 23, 25, 26 (inventions 3-7) depend on claim 8 which depends on claim 5. The additional features of claims 8 and 12 are also known from DE 198 02 953 A1. Consequently, the features of

these claims cannot be considered as special technical features in the sense of Rule 13.2 PCT.

The remaining features of the various inventions solve different problems by means of different potentially special technical features.

The problem to be solved by the 1st invention is to provide a device which is openable and reclosable. The feature which solves this problem is a threaded spout which is adapted to receive a threaded reclosing closure as defined in cl 6.

The problem to be solved by the 2nd invention is to provide measures for supporting the can for a steady stand on a flat level surface. The feature which solves this problem is a special peripheral contour of the closure as defined in claims 13-14 or, alternatively, a closing device of a diameter corresponding to the diameter of a wall portion of the can body as defined in claim 27.

The problem to be solved by the 3rd invention is to block gas and liquid in a closed position of the closure against the carrier. The feature which solves this problem is a gasket as defined in claim 20.

The problem to be solved by the 4th invention is to release an overpressure upon releasing a closed position of the carrier and closure. The feature which solves this problem is a vent passage as defined in claims 21-22.

The problem to be solved by the 5th invention is to indicate first opening of the closure. The feature which solves this problem is a tamper evidence device as defined in claim 23.

The problem to be solved by the 6th invention is to facilitate dispensing of beverage. The feature which solves this problem is a telescoping spout as defined in claims 25 and 29.

The problem to be solved by the 7th invention is to provide means for containing further products. The feature which solves this problem is a vessel being attached to a closure as defined in claims 26 and 28 .

3 Since the problems to be solved by the various inventions and the features which

solve these problems are different, the different technical features cannot be considered to be corresponding special technical features as required by Rule 13 PCT.

**Re Item V** (Invention 1)

- 1 Reference is made to the following document:

D1: DE 198 02 953 A (RASSELSTEIN HOESCH GMBH) 29 July 1999

**2 INDEPENDENT CLAIMS**

All claims related to invention 1 (taking account of the clarity objections raised under section VIII) do not appear to meet the requirements of Article 33.1 PCT, because their subject-matter is not new in the sense of Article 33.2 PCT.

- 2.1 Document D1 discloses (cf. figure 1 and column 3, line 49 - column 4, line 53) a beverage can (1) mainly made from metal sheet, having a wall portion (4) and axial ends thereof, whereby on the one axial end of the wall portion there is an "openable" and "closable" first portion and on the other axial end of the wall portion there is a "non openable" and "non closable" second portion, said first portion having a domed shape (5), vaulted axially outward; said second portion having a substantially flat panel (2) and a seam (10) surrounding said panel and attaching said panel to the wall of the can.

All features of claims 1-4 are therefore disclosed in combination in D1.

- 2.2 Furthermore, D1 discloses (cf. figure 1 and column 3, line 49 - column 4, line 53) a can (1) for receiving a beverage filled into an inside of a can body at a filler's location, said body made from metal sheet material, having a wall portion (4) and axial ends thereof, and one axial end of the wall portion having provided thereto an "openable" or "closable" first portion (5), said first portion having a domed shape, vaulted axially outward; the other axial end of the wall portion having provided a body hook for receiving and supporting a lid (2) having a substantially flat panel and a seam (10) building radial outer rim, surrounding said panel and adapted for attaching said lid (2) to the body hook of the can; said "openable" or



"closable" first portion (5) having a spout (7) of a diameter less than a diameter of said wall portion (4).

All features of claim 30 are therefore disclosed in combination in D1.

### 3 DEPENDENT CLAIMS

Dependent claims 5-12, 15-17, 19, 24, 31-33 do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of novelty (Article 33.2 PCT), because all features of these claims are disclosed in combination in D1, cf. figure 1 and column 3, line 49 - column 4, line 53. Note that the thread (7b) (cf. figure 1 of D1) defines a screw line and said screw line defines both an axial and a turning movement of the reclosing closure (8) (claims 9-11).

### Re Item VIII

- 1 Although claims 1, 2, 3, 4 and 30 have been drafted as separate independent claims, they appear to relate effectively to the same subject-matter and to differ from each other only with regard to the definition of the subject-matter for which protection is sought. The aforementioned claims therefore lack conciseness and as such do not meet the requirements of Article 6 PCT.
- 2 The terms "closable", "non closable", "openable" and "non openable" used in the independent claims are unclear and leave the reader in doubt as to the meaning of the technical features to which they refer, thereby rendering the definition of the subject-matter of said claims unclear.

This opinion is based on the understanding that the openable / closable first portion is related to the portion comprising the aperture (1e) and the closure (4), and the non-openable / non closable second portion is related to the portion comprising the lid (2) attached to the body hook (2.5) of the can.

- 3 Claims 1 and 4: "... having ... on both axial ends of the wall portion ..." should obviously mean "... having ... on the one axial end of the wall portion a ... first portion and on the other axial end of the wall portion a ... second portion" (see

also claims 2 and 3).

- 4 Claim 5 is not allowable, because the subject-matter of claims 1-4 is double claimed ("The beverage can according to one of the prior claims"). The claims which depend on claim 5 should obviously depend on one of the claims 1-4 or on any combination of two of the claims 1-4.
- 5 The terms used in claim 16 are unclear, leaving the reader in doubt as to the meaning of the technical features to which they refer.
- 6 Claim 30: The claimed subject-matter comprises a can body (1), a lid (2) and a spout (3), which is contradictory to the fact that only a "can body (1)" is claimed.